

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

WYATT H.,

Claimant,

vs.

HARBOR REGIONAL CENTER,

Service Agency.

OAH No. 2004120089

DECISION

Ralph B. Dash, Administrative Law Judge, Office of Administrative Hearings, heard this matter on September 28, 2005, and April 25 and 26, and May 30 and 31, 2006, at Torrance, California.

Jennifer Ralph, Advocate, represented Claimant Wyatt H.

Mona Z. Hanna, Attorney at Law, represented Harbor Regional Center (Service Agency).

The record was left open until June 14, 2006 for receipt of closing briefs. Each party timely filed its brief, and the record was closed on that date.

Oral and documentary evidence having been received and the matter having been submitted, the Administrative Law Judge issues the following Decision.

ISSUES

1. Should Service Agency be required to fund an additional 13 hours of 1:1 ABA services per week, through CARD, at a rate which includes supervision.

2. Should Service Agency reimburse Claimant for payments made to CARD for ABA services provided to him from November 2005 to the date of this Decision, at the rate of \$45 per hour.

1. Claimant is a five and one-half year old boy who has been a client of Service Agency since July 2004 based on his diagnosis of autism. He resides within the Torrance Unified School District (District) and currently receives 25 hours per week of Applied Behavioral Analysis (ABA) services paid for by the District. The ABA services are provided by Center for Autism and Related Disorders, Inc. (CARD) through a 1:1 aide. All ABA services paid for by the District are provided at school. In addition, Service Agency pays for two hours of ABA services per week, also provided by CARD, which are home/community based.

2. The clinical diagnosis of autism emphasizes emotional detachment, extreme interpersonal isolation, little if any toy or peer play, language disturbance (mutism or echolalia), excessive rituals, and onset in infancy. Diagnosis is based on a structured interview with parents, on observations of the child's free-play behaviors, on psychological testing, and on access to pediatric examinations. Autism is often characterized by minimal emotional attachment; gross and sustained impairment of reciprocal social interaction; absent or abnormal speech; retarded intelligence quotient (IQ); restricted, repetitive, ritualistic, and stereotyped patterns of behavior, interests, and activities; aggression; and/or self-injury. As a "spectrum disorder," some but not all of these characteristics may be present. It is difficult to treat.

3. ABA, as an intervention for the treatment of autism, is often associated with specific behavioral methods such as: discrete trial training (DTT), which is sometimes also called "Lovaas" therapy or the Lovaas method; intensive behavioral intervention; incidental teaching; pivotal response training; and, verbal behavior analysis. A discrete trial is a single cycle of a behaviorally-based instruction routine. A particular trial may be repeated several times in succession, several times a day, over several days (or even longer) until the skill is mastered.

4. ABA entails the application of principles of human learning and the design, implementation, and evaluation of systematic environmental modifications to enhance the development, abilities, and self-direction skills of children with disabilities, so as to enhance their productivity and abilities. It uses direct observation and measurement of behavior and environment. Contextual factors, established operations, antecedent stimuli, positive reinforcers, and other consequences are used, based on identified functional relationships with the environment, in order to produce practical behavior change.

5. Children with autism don't learn naturally from experience. They have to be taught how to learn. ABA takes everyday activities and tasks and breaks them down into their most elemental components. The child is then urged to repeat each task until it has been learned. Once a task is learned, it is then generalized into other applications. Negative behaviors are generally ignored; if aversive treatment is called for, it is minimal, consisting of repetitious utterances of the word "No" and, on occasion, the instructor's slapping of the instructor's own thigh. Prompts or other assistance are timed and provided to assure correct responses, and then gradually "faded" to establish independence. The subject is then urged to repeat each task until it has been learned.

6. Research has established that less-than-intensive ABA training has generally been unsuccessful. For example, one study discloses that a control group which received only 10 hours of one-to-one therapy reported no change from its position at the beginning of the therapy, while the experimental group made substantial progress. Generally, successful efforts have followed the Lovaas approach of administering this intensive therapy for an average of 40 hours per week for two or more years.

7. The results of the original Lovaas study were impressive. Nine of the 19 children in the experimental group were able to successfully participate in regular education classes. They performed on a par with their peers on tests of IQ, adaptive skills and emotional functions. The control group showed only minimal improvement.

8. Due to the extensive amount of time required for children to undergo ABA treatment and for researchers to amass their data, as well as certain ethical considerations with respect to the propriety of withholding treatment from control group subjects, it is difficult to replicate Dr. Lovaas' study using standard research methods. However, recent attempts at replication have demonstrated that there is substantial merit to Dr. Lovaas' original findings.¹ Additionally, official notice is taken that ABA and the work of Dr. Lovaas and others have been recognized as effective by the Surgeon General. Psychology is a social science. As such, it does not yield the type of concrete, consistent results found in the physical sciences. For example, a certain type of therapy, which shows excellent results for a certain age group, will not be successful on every individual within that group. Conversely, the same therapy that is statistically unlikely to be successful with a different age group may show astonishing results on certain individual within that group. ABA therapy has been proven successful. More importantly, as more fully set forth below, Claimant, the only individual for whom “replication” is an issue in this case, has most definitely replicated those positive results.

9. On April 19, 2004, the District determined that Claimant was eligible for special education services under the classification of “Language Impaired” based on his “significant delays in the area of receptive language.” In her Diagnostic Evaluation Report dated June 17, 2004, Dr. Doreen Granpeesheh, a psychologist and Clinic Director of CARD, gave Claimant a formal Axis 1 diagnosis of Autistic Disorder.² She recommended that Claimant “begin receiving 20 hours per week of 1:1 home based behavioral intervention” by therapists using ABA techniques and an additional 20 hours of service of a “shadow (1:1) aide” at school. Accordingly, Claimant requested that the District provide 40 hours of ABA services. As noted above, the District agreed to provide 25 hours.³

¹ One of the difficulties in exactly replicating the original Lovass study is that the child was slapped (albeit gently); the therapist did not slap his/her self. Slapping a child as a form of aversion therapy is no longer considered appropriate.

² As there was virtually no dispute this diagnosis was correct (other than as to the degree it affects Claimant), no analysis of Dr. Granpeesheh's findings is necessary.

³ The District originally agreed to provide only 20 hours per week, but later increased it to 25 hours.

10. Claimant requested that Service Agency provide the additional 15 hours per week of ABA services, of the 40 hours per week Dr. Granpeesheh recommended, but it refused, granting two hours per week only. In its denial letter of September 20, 2004, the District agreed to provide, in addition to the two hours of ABA services through CARD, “social skills training for [Claimant] through one of our service providers which specialize (sic) in this type of intervention.” In the denial letter, Service Agency also stated, “It is unfortunate that we were not included in the Individual Education Plan (IEP) meeting that was recently conducted to determine school services for [Claimant].”⁴

11. Claimant, as is common with children with autism, exhibits atypical and maladaptive behaviors. His most problematic behaviors involve lack of social engagement, noncompliance, lack of self-help skills, and inability to initiate and sustain conversation. He also engages in self-injurious behavior, aggression,⁵ and elopement.⁶ He is impulsive and lacks awareness of common dangers, such as talking to strangers. Claimant cannot read “social cues” such as facial reactions of other children. He has no concept of “personal space” and is continually “in the face” of other children at play. Not surprisingly, his peers do not want to play with him, and he spends much of his playtime at school by himself. He also engages in “body slamming” (throwing himself against a wall or door, including a large sliding glass doors at his home which he broke) and licking of objects, including public toilets. On occasion, he disrobes in public. He also on occasion forces himself to vomit.

12. Dr. Avazeh Chehrazi, a Clinical Psychologist who also testified at the hearing,⁷ performed an extensive assessment of Claimant over a period of five days in July 2004. She issued her report, dated July 16, 2004, confirming the diagnosis of Autistic Disorder. Her assessment included reviewing District records and assessments, direct behavioral observations of Claimant at her office and at Claimant’s school, teacher and parent interviews, and administration of a number of tests. These included the Mullen Scales of Early Learning,⁸ the Child Development Inventory,⁹ the Vineland Social-Emotional Early

⁴ Claimant was determined to be eligible for Service Agency services on July 18, 2004. As Claimant’s initial IEP was held on April 19 and June 22, 2004, Claimant was not yet a client of Service Agency. However, Service Agency did send a representative to Claimant’s IEP meeting held on April 19, 2005. There, Service Agency advocated that the District should provide 40 hours of ABA services per week. At the hearing of this matter, Service Agency explained that it advocated for 40 hours of ABA services per week only because that is what Claimant’s parents wanted, not because it believed 40 hours of ABA services was appropriate.

⁵ Claimant is very large for his age, causing his aggression towards peers to be of great concern.

⁶ His elopement includes running out of the house, sometimes taking his younger brother with him. This is particularly dangerous as Claimant lives on a busy, heavily trafficked street. He will also walk away from his parents at public parks and amusement parks, and sometimes will dart into an elevator before anyone can follow.

⁷ Dr. Cherazi testified consistently with her reports. Accordingly, it is not necessary to summarize her testimony.

⁸ This is an assessment of learning styles, strengths and needs, and is comprised of four cognitive scales assessing performance in visual reception, fine motor, receptive language and expressive language.

Childhood Scales,¹⁰ and the Autism Diagnostic Observation Schedule.¹¹ On the composite index of each of the first three tests, Claimant scored significantly below the norm for his age level. On the last test, Claimant exceeded the threshold for criteria for autism.

13. In her July 16, 2004 report, Dr. Chehrazi stated in part:

It is clear that [Claimant] presents with many treatment needs. Autism is classified as a pervasive developmental disorder, such that it impacts many areas of development, thus when investigating possible treatment options, it is important to consider one that is delivered in a comprehensive, consistent and systematic manner. The goal of early intervention is to help reduce the effects of the symptoms of autism that may hinder [Claimant's] development and while education is a life long process, these early years are critical for long term success. Unfortunately, exposure to everyday instances of spontaneous language and social communication at home and at preschool have not yet lead to [Claimant's] modeling of this behavior. Thus more intensive and direct intervention is required, with one of the goals of intervention being to help [Claimant] become a better communicator. It is important that [Claimant's] speech abilities be used beyond making requests or responding to questions, they should be used in social communicative manners. However, additional self-care, motor skills, receptive skills, and academics need also to be incorporated into the comprehensive treatment program.

14. In concluding her report, Dr. Chehrazi recommended that Claimant be provided with 40 hours per week of 1:1 ABA services, divided between home and school. She stated, "Such intensive and appropriate educational and behavioral intervention will foster the acquisition of basic social, verbal and nonverbal communication, adaptive, and cognitive skills, as well as address behavioral concerns, evidenced as areas of need in [Claimant] that will be necessary for home, school success and personal sufficiency." Despite the recommendations of Dr. Chehrazi and Dr. Greenpesheh, the District chose to provide only 25

⁹ This is a parent rating scale. It measures development in eight areas: social, self-help, gross motor, fine motor, expressive language, language comprehension, letters, and numbers. Dr. Chehrazi used this scale, as opposed to the more common Vineland Adaptive Behavior Scales, as the District administered the latter in its assessment done three months earlier.

¹⁰ This is an assessment of a child's usual social and emotional functioning. It is comprised of three scales measuring interpersonal relationships, play and leisure time, and coping skills.

¹¹ This is a semi-structured assessment instrument designed to assess communication, social interaction, play and imaginative capabilities via the use of "presses" or social occasions in which particular types of behaviors are likely to appear.

hours per week of ABA services, all at school, and Service Agency agreed to provide only two additional hours of ABA services per week at Claimant's home.

15. At the hearing of this matter, Service Agency defended its denial of additional ABA hours in large part on the testimony and reports of Dr. John D. Cone, a Clinical Psychologist and Board Certified Behavior Analyst. Dr. Cone is a well respected, well credentialed psychologist who has extensive experience with children with autism, and is a strong advocate of the use ABA interventions.¹² He issued his report on June 6, 2005, making a determination that the 27 hours per week of ABA services that Claimant had been receiving for the past year were sufficient, and the hours need not be increased. In his assessment, Dr. Cone reviewed numerous prior reports, including that of Dr. Chehrazi, as well as school records and a CARD functional behavior assessment report. He "did not feel it was necessary" to speak to anyone at CARD, not even the therapists who had been working with Claimant during the preceding year. He also had Claimant's mother complete the Adaptive Behavior Assessment System questionnaire.¹³ The validity of this questionnaire was called into serious question. The form was apparently sent to Claimant's mother by facsimile transfer, and in transmission, every other line was blacked out. Thus, Claimant's mother answered only half of the questions.¹⁴ Dr. Cone also observed Claimant at school and at home.

16. In concluding that Claimant did not need additional ABA services, Dr. Cone stated in his June 6, 2005 report:

The level and type of services proposed for [Claimant] for the 2005-04 (sic) school year are in keeping with recommendations from national panels and state commissions. For example, the 27.5 hours of educational services he will get per week together with the two hours per week of in-home educational service provided by [Service Agency] are consistent with the 25 hours per week recommended by the National Research Council.^[15]

Given his high level of developmental functioning and the fact that he has received 1:1 services over the past school year, it is anticipated his direct instruction at home would be

¹² He has testified numerous times on behalf of various Regional Centers, including Service Agency, where the issue has been whether that particular Regional Center should fund additional hours of ABA services.

¹³ This test is used to assess 10 areas of adaptive skills: communication, community use, functional academics, home living, health and safety, leisure, self-care, self-direction, social, and work. It is used to assess both children and adults.

¹⁴ Dr. Cone testified that "it would have been a good idea" to ask Claimant's mother to redo the questionnaire.

¹⁵ Dr. Cone conceded that the 25 hours referred to were the "minimum" hours recommended, not the total hours recommended.

decreasing.^[16] At the same time, he should receive increasingly more of his education in age-typical settings such as the school he is now attending. This is consistent with the contemporary practice for children with autism.

Dr. Cone's report does not address any of the maladaptive behaviors, noted in Finding 11, Claimant has exhibited.

17. After the first day of the hearing of this matter, both Dr. Chehrazi and Dr. Cone reassessed Claimant. Dr. Cherhrazi completed her reassessment on October 14, 2005. In addition to reviewing documents and speaking with teachers and parents, Dr. Cherhrazi observed Claimant at school and in a community setting, going to a grocery store, McDonald's and the park. She re-administered the Child Development Inventory and also completed the Scales of Independent Behavior-Revised Early Development Form.¹⁷ The results of this latter evaluation showed Claimant's "General Maladaptive Index" to be -37, which places him at the "serious" level of the Problem Behavior Index. Maladaptive behaviors included continued elopement, "using too much force, not realizing his size," taking things apart and throwing them, being disruptive, continued body slamming, placing objects in his mouth, withdrawal, and spitting on others. Dr. Cherhrazi noted that, "Based on [Claimant's] overall level of adaptive functioning and the presence of moderate-serious maladaptive behaviors, he requires 'extensive' support. This indicates that [Claimant] is in need of continuous support and supervision during much of his day."

18. Dr. Cherhrazi noted that Claimant had made significant improvement since her previous evaluation. However, she nevertheless concluded that Claimant was still in need of the 40 hours of ABA services she had originally recommended. She stated in her report:

Thus, while [Claimant] is slowly learning new coping skills and appropriate behavioral control/tolerance, and is demonstrating such skills in some situations, he is not drawing on these skills across a variety of situations or with a variety of people. Many children with autism engage in serious problem behavior and while the frequency and intensity of such behaviors has decreased, it is imperative that continued attention be targeted to this area as these behaviors harm the quality of life for [Claimant's] family, can be potentially dangerous, and can prevent [Claimant] from being successfully integrated into the neighborhood.

¹⁶ As Claimant was receiving only two hours of ABA services per week at home, it was difficult to understand Dr. Cone's reference to decreasing home hours; he did not elaborate on this in his testimony.

¹⁷ This is designed to measure adaptive and problem behaviors. It is a comprehensive measure of functional independent behavior in school, home and other settings, or more generally, a person's ability to effectively meet social and community expectations per their age and their social context.

Following the issuance of this second report, Claimant's family began paying CARD to provide additional ABA services to Claimant. The number of hours varied from week to week but, according to the billing statements provided at the hearing, average approximately three to four hours per week.¹⁸ The rate paid was \$45 per hour.

19. Dr. Cone's second assessment of Claimant occurred on April 5, 2006, and consisted of his observing Claimant at school for 45 minutes. Dr. Cone concluded from his observations that his original assessment was proper and that Claimant was doing well. He stated in his "Report of School Observation:"

[Claimant] would be difficult to identify as different if he were unknown to an observer viewing the children at school that day. He showed no challenging behavior during our visit, and appeared to be benefiting from the preppy kindergarten placement we observed. He does not appear to require additional support at this time. It is important to note we did not observe academic instruction, so it is not possible to assess how he participates in individual seat work or whole class lessons. . . This is not to say that, as with most children, he could not benefit from further development of interpersonal skills. Given his adequate developmental functioning overall, however, these are likely to emerge as he experiences the normal social opportunities afforded children his age.

Dr. Cone did not, as did Dr. Chehrazi, observe Claimant in a community setting. Nor was he aware, apparently, that Claimant had been receiving additional ABA services, paid for by Claimant's parents, for the five months preceding his observation. During his testimony, Dr. Cone agreed that Claimant's behavior at school, a relatively highly structured environment, might very well be different from his behavior at home or in the community. He did not explain how Claimant's receipt of ABA services at school would affect Claimant's behavior out of school. The rationale for recommending a split of ABA services between home and school is that, as these two environments are totally different, the maladaptive behaviors exhibited by Claimant, or any other child with autism, may be totally different in each, and the services provided must coincide with the behavior sought to be modified.

20. According to Claimant's mother, Claimant's elopement, particularly while out in the community, is an ever-increasing problem. He has recently begun to crawl out of the family van and lay down in the middle of parking lots. While he has laid down in parking lots before, his crawling out of the van is a new behavior. His mother agrees that Wyatt is doing well academically, but is doing poorly on a social level. He is still aggressive, tantrums and elopes.

¹⁸ Claimant's mother testified the family was paying for an additional five hours per week of ABA services provided through CARD. The discrepancy between this testimony and the CARD invoices was not reconciled by other evidence.

21. Unrebutted evidence presented at the hearing of this matter shows that the services CARD has been providing have helped Claimant greatly. Dr. Cone expressed dissatisfaction with CARD in general, but really offered no specifics, vis-à-vis Claimant, as to what if anything was lacking in their therapy, as opposed to possible deficiencies in their preparation of reports and goals. Even that criticism was somewhat muted by a review of the CARD progress reports, which showed highly detailed analysis of the goals set, therapy provided, and goals achieved. It actually is somewhat surprising that Dr. Cone expressed general dissatisfaction with CARD's work, and even more surprising that he found it "unnecessary" to speak with CARD therapists. In the case of *D.N., Claimant, vs. REGIONAL CENTER OF ORANGE COUNTY, Service Agency*, OAH No. L2002050190, a case remarkably similar to this one, the Administrative Law Judge made the following Finding of Fact:

13. Regional center concedes that the ABA/DTT in-home based program run by CARD is a "proper modality" for the difficult task of changing the behaviors of the autistic child. In fact, it is agreed that such a program is probably the most effective treatment now in use to achieve the societal goal of life independence for the autistic individual. In this matter, psychologist Dr. John Cone testified that an increase in services (from 20 to 40 hours of home therapy) is justified only when progress is not being made, or insufficient progress is being made at the current level of services. Dr. Cone points to the remarkable progress demonstrated by CARD's July 2002 progress report as evidence that no increase in that provider's service level is necessary. He also opined that parent training is critical, and that the request under consideration duplicates the services offered by claimant's educational system. However, Dr. Cone agrees that each program, and the number of hours necessary to meet the goals of the IPP, is appropriately individualized, and concedes that he has never met nor tested claimant. **He further concedes that CARD, which Cone says is doing a "spectacular" job with D.N., is the best source of information to make that determination in claimant's case.** (Emphasis added.)

22. It is axiomatic that in nearly all things, more is not necessarily better. Indeed, the literature does not support with assurance the assertion that 40 hours of ABA services per week are necessarily more effective than 20 hours. But the professionals who have worked with this Claimant for well over one year, with great success, have recommended 40 hours in his individual case. Service Agency's assertion that CARD always recommends 40 hours was not supported by any data to that effect. CARD remains an important regional center vendor of choice. Moreover, it cannot be said with complete confidence that the Lovaas method does *not* require 40 hours of weekly discrete trial training. On balance, the reports

and testimony of Dr. Chehrazi, coupled with the progress reports from CARD and the testimony of the CARD therapists, are given substantially greater weight than the reports and testimony of Dr. Cone. Thus, it is concluded that Claimant is entitled receive the 40 hours per week of ABA services recommended by Dr. Chehrazi and CARD.

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LEGAL CONCLUSIONS

1. The Lanterman Developmental Disabilities Services Act (the Lanterman Act) is set forth in the Welfare and Institutions Code section 4500 et. seq.¹⁹ Under the Lanterman Act, California has accepted responsibility to assist the developmentally disabled by providing coordinated services and supports designed to meet the needs and choices of such disabled persons. The services and supports are to support, as far as possible, the integration of the developmentally disabled into the mainstream life of the community, and to assist them in approximating the pattern of everyday living available to those who are not disabled. (Code section 4501.) At the same time, maintenance of the disabled in the family home is made a priority. (Code section 4648, subdivision (a)(1).)

2. The Lanterman Act urges the provision of services in claimant's home when possible and appropriate by its providing as a matter of right that treatment and habilitation services and supports be provided in the "least restrictive environment." Claimant's home is the least restrictive environment. (Code section 5402, subdivision (a).) The Act also requires a service agency to take into account the preferences of the family, where appropriate. (Code section 4646, subdivision (a).)

3. Section 4512, subdivision (b) of the Lanterman Act states in part:

'Services and supports for person with developmental disabilities' means specialized service and supports or special adaptations of generic services and support directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or re-habilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives. The determination of which services and supports are necessary . . . shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of . . . the consumer's family, and shall include consideration of . . . the effectiveness of each option of meeting the

¹⁹ Unless otherwise specifically noted, all code references are to the Welfare and Institutions Code.

goals stated in the individual program plan, and the cost-effectiveness of each option. *Services and supports listed in the individual program plan may include, but are not limited to, diagnosis, evaluation, treatment, . . . physical, occupational, and speech therapy, training, education, . . . behavior training and behavior modification programs, . . .* (Emphasis added.)

4. The services to be provided to any consumer must be individually suited to meet the unique needs of the individual client in question, and within the bounds of the law, each client's particular needs must be met. (*See, e.g., Code sections 4500.5, subdivision (d), 4501, 4502, 4502.1, 4640.7, subdivision (a), 4646, subdivision (a), 4646, subdivision (b), and 4648, subdivision (a)(1) and (a)(2).*)

5. Services provided must be cost effective (Code section 4512, subdivision (b)), and the Lanterman Act requires the regional centers to control costs so far as possible, and to otherwise conserve resources that must be shared by many consumers. (*See, e.g., Code sections 4640.7, subdivision (b), 4651, subdivision (a), 4659, and 4697.*) To be sure, the obligations to other consumers are not controlling in the decision-making process, but a fair reading of the law is that a regional center is not required to meet a disabled child's every possible need or desire, in part because it is obligated to meet the needs of many children and families.

6. If a generic agency is required to provide services, but fails or refuses to do so, such services must be provided by the regional center, or it must make up any service shortfall; regional centers are known as the "payor of last resort." This includes provision of those services needed to assist the consumer in maximizing his or her potential for a normal life, and to approximate patterns of normal living and integration into the community. If the regional center believes the generic source, including a school district, has failed to meet its obligations, then it must provide the services, and it is authorized to pursue reimbursement under Code section 4659.

7. ABA has both social and academic components, and the two often overlap. However, even if it were established that the additional hours requested by claimant were purely academic, this would not obviate the service agency from the responsibility of funding those hours. The language of the Lanterman Act makes clear that, should a "generic agency," such as a school district, fail or refuse to provide a consumer with those supports and services that are needed to allow that person to maximize his/her potential for a normal life, the Regional Center is required to make up the service shortfall.

8. The evidence established that Claimant requires 40 hours of ABA services per week, divided between home and school. Claimant is currently receiving 25 hours of ABA services per week at school, paid for the District, and two hours per week of ABA services at home, paid for by Service Agency. Thus, there is an unmet balance of 13 hours per week of home based ABA

services that must be funded. Funding for this unmet balance is the responsibility of Service Agency. (Code sections 4501 and 4648, subdivision (f)).

9. The evidence was clear that Claimant should have been receiving 40 hours per week of ABA services from the time Claimant first requested it. By November 2005, Claimant's family took it upon itself to provide at least a part of those services which Service Agency should have provided. Accordingly, reimbursement is appropriate as Claimant's family was required to undertake a task that should have been performed by Service Agency. The principles of equity, coupled with the stated purposes of the Lanterman Act, justify reimbursement.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

1. Service Agency fund an additional 13 hours of 1:1 ABA services per week, through CARD, at a rate which includes supervision.

2. Service Agency shall reimburse Claimant for payments made to CARD for ABA services provided to him at the rate of \$45 per hour since November 2005 to the date of this Decision. Service Agency shall promptly pay such reimbursement upon presentation to it of documentation that the services have been rendered to Claimant, and have been paid, or are required to be paid, by Claimant's family.

Date: _____

RALPH B. DASH
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision. Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.